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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/505,119 02/16/00 REVNELL

J REV02 P-300

EXAMINER

000277 MM91/1024  
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ART UNIT

PAPER NUMBER

2859  
DATE MAILED:

10/24/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Office Action Summary**

Application No.

09/505,119

Applicant(s)

REVNELL, JOSEPH D.

Examiner

Mirellys Jagan

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 and 25-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 25 is/are rejected.
- 7) ☒ Claim(s) 26-29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Specification*

- ✓ 1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

Claims 26-29 claim a motor controller operatively connected to the tape. There is lack of antecedent basis for a motor controller in the specification.

### *Drawings*

- ✓ 2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:

Reference numbers "55" (page 7, line 8), "110a" (page 11, line 16), "128" (page 12, line 11), "21c" (page 12, line 14), "136" (page 12, line 25), and "10e" (page 14, line 1) are missing from the figures. Correction is required.

- ✓ 3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "74" has been used to designate both the distal end of the front leg and the holder. Correction is required.

### *Claim Rejections - 35 USC § 112*

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 17 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Regarding claim 17, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

7. Claim 25 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim is not clear because the preamble defines a device, whereas the body of the claim defines method steps.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-2, 7-11, and 13 rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,344,231 to Martinez.

Martinez discloses a device having a circular board (board 12) with a flat surface, non-slip feet, and paper (sheet 44) placed on the surface, upon which either the surface or the paper can be marked upon, and an angle and distance measuring device (measuring element 16) rotatably coupled to the board, the angle and distance measuring device including a tape measure incorporating a tape (tape 30) that has an edge that facilitates marking on the board or paper to form a template as the device is rotated and the tape is extended and retracted from a central point, where the tape measure has an extender for mechanically extending the tape(see figure 1).

10. Claims 1-7 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 4,835,870 to Rauch et al [hereinafter Rauch].

Rauch discloses a device having a board (plate 10) with a flat surface that can be marked on and an angle and distance measuring device (bracket 11) rotatably coupled to the board, the angle and distance measuring device including a carrier (housing 21), having a front leg with a straight edge and guides (ribs 20) for the tape, that is pivotally coupled to the board and houses a tape measure (tape case 12) within, the tape measure incorporating a tape (tape 19) that has an edge that facilitates marking on the board to form a template as the device is rotated and the tape is extended from a central point (see figures 1 and 2), where the tape measure has an extender (handle clip 31) for mechanically extending the tape.

11. Claim 25 is rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 2,349,670 to Moxey.

Moxey discloses a device having a stationary member with a flat surface that can be marked upon, an angle and distance device rotatably coupled to the stationary member, the device including a tape having an edge that facilitates marking on the stationary member and can be extended from a central point, and a marking device that can mark on the stationary member as the device is rotated and the tape is extended and retracted. Furthermore, in utilizing the device of Moxey to mark a surface, the method of claim 25 would inherently be followed (see figure 1).

*Claim Rejections - 35 USC § 103*

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Martinez.

Martinez discloses a device having all of the limitations of claim 12, except for the device having a semi-circular configuration.

With respect to claim 12, the shape of the stationary member, i.e., semi-circular shaped, absent any criticality, is only considered to be an obvious modification of the shape of the device disclosed by Martinez as the courts have held that a change in shape or configuration, without any criticality, is within the level of skill in the art as the particular shape claimed by Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art will find

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obvious to provide using routine experimentation based on its suitability for the intended use of the invention. See *In re Dailey*, 149 USPQ 47 (CCPA 1976).

14. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rauch in view of Moxey.

Rauch discloses a device having all of the limitations of claim 14, except for the tape including a tape end with a holder attached thereto for securing a writing utensil.

Moxey discloses a device (measuring instrument) having a tape (tape 12) where the tape end has a holder (head 21) attached thereto for securing a writing utensil (pencil 42).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Rauch by adding a writing utensil holder to the tape end, as taught by Moxey, in order to mark locations at a various measured distances.

15. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rauch in view of U.S. Patent 4,181,959 to Tateishi.

Rauch discloses a device having all of the limitations of claim 15, except for the angle and distance measuring device having a digital readout for communicating a distance that the tape is extended.

Tateishi discloses a device (digital scale and calculator 10) having a digital readout (display 16) for communicating a distance that the tape is extended (see figure 1).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Rauch by adding a digital readout to the distance measuring device, as taught by Tateishi, in order to quickly and accurately obtain a measurement reading.

16. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rauch in view of U.S. Patent 6,115,931 to Arcand.

Rauch discloses a device having all of the limitations of claim 16, except for the tape having a pivotal pointer at its distal end.

Arcand discloses a device (tape measure) having a tape with a pivotal pointer (pin attachment 100) at its distal end (see figure 3).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Rauch by adding a pivotal pointer at the distal end of the tape, as taught by Arcand, in order to attach the device to a horizontal member when taking measurements.

17. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 3,763,569 to Merlat in view of U.S. Patent 4,882,850 to Lindsey.

Merlat discloses a device (tape measure) having a stationary member (frame 1) and a tape measure (tape 9) for measuring a room (see figures 1 and 2, and column 2, lines 10-16).

Merlat does not disclose the device as having recording means on the stationary member.



Lindsey discloses a device (tape measure 10) having recording means (recorder 12) on a stationary member (measure body 16) (see figure 1).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Merlat by adding recording means on the stationary member, as taught by Lindsey, in order to instantly save the measurements taken for later use. Furthermore, in utilizing the device of Merlat, as modified by Lindsey, to measure a distance, the method of claim 17 would inherently be followed.

18. Claim 18 rejected under 35 U.S.C. 103(a) as being unpatentable over Merlat and Lindsey as applied to claim 17 above, and further in view of Arcand.

Merlat, as modified by Lindsey, discloses a device having all of the limitations of claim 18, except for the tape having a pivotal pointer at its distal end.

Arcand discloses a device (tape measure) having a tape with a pivotal pointer (pin attachment 100) at its distal end (see figure 3).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the device disclosed by Merlat and Lindsey by adding a pivotal pointer at the distal end of the tape, as taught by Arcand, in order to attach the device to a horizontal member when taking measurements. Furthermore, in utilizing the device of Moxey, Lindsey, and Arcand to measure a distance, the method of claim 18 would inherently be followed.

*Allowable Subject Matter*

19. Claims 26-29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims, and amended to overcome the objection(s) set forth in this Office action.

*Conclusion*

20. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patent discloses a device having a motorized measuring tape:

U.S. Patent 5,768,797 to Trevino

The following patents disclose a device having a digital measuring tape:

U.S. Patent 4,181,960 to Tateishi

U.S. Patent 4,195,348 to Kakutani

French Patent 002 614 982 to Mercier

The following patents disclose a device having a rotating measuring tape with a writing implement:

U.S. Patent 5,253,421 to Landmark

U.S. Patent 3,269,015 to Barker

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 703-305-0930. The examiner can normally be reached on M-F 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F Gutierrez can be reached on 703-308-3875. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7725 for regular communications and 703-308-7725 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

mj  
October 17, 2001



**Diego Gutierrez**  
Supervisory Patent Examiner  
Technology Center 2800